IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5352 OF 2006

Mark Philip Barretto and ors. .. Petitioners.
Vs
Mrs Libretta Abel Rodrigues
and ors. .. Respondents.

Mr M.S.D'Mello, for the petitioners.

Mr N.V.Walawalkar a/w Mr Sameer Bhalekar, for respondent nos 1 and 2.
Mr Cline D'Souza, for respondent no.3
Mr Manoj Kumar i/b Mr Krishna Tanna for respondent no.4.

CORAM : D.B.BHOSALE,J.
DATE : 05.09.2006

PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. The learned counsel, waive service for the respondents. By consent, rule is heard forthwith.

3. By this writ petition under Article 227 of the Constitution of India, the petitioners have impugned the order dated 9.6.2006 passed by the trial Court dismissing the two chamber summons nos.1397 of 2005 and 231/06. Both the chamber summons were filed by the applicants for adding them as party defendant nos 3 to 6 in S.C.Suit No.3849 of 2004. Both the chamber summons were dismissed by common order. The applicants in Chamber Summons No.231 of 2006 had challenged the order

dated 9.6.2006 by way of writ petition no.4652 of 2006 in this court. The learned Single Judge, vide order dated 25.7.2006, allowed the writ petition and quashed and set aside the order dated 9.6.2006 and allowed the chamber summons 231 of 2006. Mr. D'Mello, learned counsel for the petitioners, invited my attention to the order passed by this court dated 25.7.2006 and submitted that for the self-same reasons the present writ petition may also be allowed. Mr Walawalkar, learned senior counsel for the respondents-plaintiffs, however, submitted that in any case the petitioners cannot claim any relief in the present suit and the only remedy for them is to file separate suit. After having considered the submissions of the learned counsel for the parties, perused the order impugned and the order passed by this court dated 25.7.2006 in writ petition no.4652 of 2006, I am inclined to allow this petition. Hence the following order.

(i) This writ petition is allowed for the self-same reasons recorded by this court in the order dated 25.7.2006 and as a consequence thereof, the impugned order stands quashed and set aside and the chamber summons no.1397 of 2005 is hereby allowed. Rule is made absolute accordingly, with no order as to costs.

(D.B.BHOSALE,J.)